

STAFF SUMMARY RECOMMENDATION

RESOLUTION OF THE CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY DELEGATING CERTAIN POWERS AND AUTHORIZING CERTAIN ACTIONS RELATED TO HELP II LOAN PROGRAM FINANCINGS Resolution Number 2011-09

December 1, 2011

BACKGROUND: By statute (Government Code section 15436), the Authority is authorized to delegate to the Executive Director or any other official or employee of the Authority, any powers and duties the Authority may deem proper. Staff brings this delegation of powers report before the board on a third occasion to reference additional adjustments as recommended by board members at the October 12th board meeting. An additional section that relates to subordinations of security interests has been added and is reflected, along with other changes, in an attached track changes version.

PURPOSE OF THE RESOLUTION: From time to time, HELP II borrowers seek consent from the Authority to amend various aspects of borrower loan documentation to accomplish such things as (1) changing the trustee on their deeds of trust, (2) selling, encumbering or transferring project assets, (3) merging, acquiring, dissolving, or changing the legal name of the borrower, (4) subordinating or otherwise altering the Authority's security interests, and (5) prepaying HELP II loans. Absent a delegation permitting staff to grant consent to borrowers, staff must seek formal Authority board approval for many of these amendments. In the interest of expediting the approval process, staff requests the Authority authorize the Executive Director and Deputy Executive Director to consent to various amendments without first obtaining approval of the Authority board.

The proposed resolution delegates to the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to perform the following, when consent or approval by the Authority is required by the applicable loan documents and such actions are made in accordance with the terms and conditions of the loan documents:¹

- (i) Sign and certify resolutions adopted by the Authority.
- (ii) Execute and deliver all loan documents previously or hereafter approved by the Authority.
- (iii) Amend and supplement certain loan documents.
- (iv) Consent to changes in trustees.
- (v) Approve or consent to the sale, encumbrance or other transfer of all or a portion of a project financed with loans provided by the Authority.
- (vi) Authorize and/or execute subordination agreements for changes to security interests (change in lien positions of gross revenue pledges and/or collateral).
- (vii) Approve or consent to a merger, acquisition, dissolution, name change, or the sale of assets by a participating party.
- (viii) Carry out any ministerial actions contemplated by any loan documents.
- (ix) Respond to any litigation or claim made against the Authority in connection with any loan issue, or any investigation of any loans by any state or federal regulatory or law enforcement authorities when such response is required by law and is necessary to protect the interests of the Authority, or to effectuate the terms of the applicable resolution adopted by the Authority.

RECOMMENDATION: Staff recommends the Authority approve Resolution No. 2011-09 authorizing the delegation of certain functions relating to the HELP II Loan Program to the Executive Director and Deputy Executive Director.

¹ Please note that certain powers or authority, specifically i, ii, viii, are typically already included within the resolutions approving loans for borrowers.